

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

United States of America,

vs.

Reginald Dunlap.

)
)
)
)
)
)

Cr. No. 4:07-00208-TLW

ORDER

This matter is before the Court upon Defendant Reginald Dunlap's February 3, 2014 Pro Se Motion to Reduce Sentence in which Defendant states that he is "seeking the 18 to 1." (Doc. #533). Presumably, Defendant's motion refers to the crack versus crack cocaine ratio under the Fair Sentencing Act of 2010 ("FSA") and incorporated into the U.S. Sentencing Guidelines by Amendment 750. The Government has responded and opposes this motion. (Doc. #546).

On July 9, 2007, Defendant pleaded guilty to conspiracy to distribute and possess with intent to distribute cocaine base. (Doc. #209). The Defendant was subject to a Title 21 U.S.C. § 851 enhancement at sentencing and received the statutory minimum sentence of 20 years imprisonment. (Doc. #309). Because Defendant was subject to a statutory minimum sentence imposed prior to the FSA's effective date, he is not eligible for relief under either Amendment 750 or the FSA. The Defendant would not be eligible for relief under Amendment 750 even if the Amendment applied retroactively because the statutory minimum in the Defendant's case was higher than the otherwise applicable guideline range. Thus, the statutory minimum has precedence and determines the sentence. See U.S.S.G. § 5G1.1(b). Furthermore, the Defendant is not eligible for relief under the FSA because he was sentenced on March 20, 2008. The FSA became effective on August 3, 2010, over two years later, and the FSA was not expressly made retroactive. See United States v. Bullard, 645 F.3d 237, 248-49 (4th Cir. 2011); see also Dorsey

v. United States, 132 S. Ct. 2321 (2012). Thus, neither the FSA nor Amendment 750 provides the Defendant with any basis for relief. Accordingly, Defendant's Motion to Reduce Sentence, (Doc. #533), is **DENIED**.

IT IS SO ORDERED.

s/ Terry L. Wooten
Chief United States District Judge

July 2, 2014
Columbia, South Carolina